

AMENDED IN SENATE MARCH 23, 2000

SENATE BILL

No. 1569

Introduced by Senator Hayden

February 18, 2000

An act to amend Sections 422.6, 422.7, and 422.75 of the Penal Code, relating to hate crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1569, as amended, Hayden. Hate crimes.

Existing law imposes increased penalties on a person who commits specified acts of violence or threats of violence against a person because of that person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

~~This bill would declare the Legislature's intent to expand the definition of a hate crime to include those persons who are victimized based upon their association with other people of a specific race, religion, or sexual orientation who have one or more of those characteristics.~~

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~
yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

~~SECTION 1. It is the Legislature's intent to expand
the definition of a hate crime to include those persons
who are victimized based upon their association with
other people of a specific race, religion, or sexual
orientation.~~

SECTION 1. Section 422.6 of the Penal Code is
amended to read:

422.6. (a) No person, whether or not acting under
color of law, shall by force or threat of force, willfully
injure, intimidate, interfere with, oppress, or threaten
any other person in the free exercise or enjoyment of any
right or privilege secured to him or her by the
Constitution or laws of this state or by the Constitution or
laws of the United States because of the other person's
race, color, religion, ancestry, national origin, disability,
gender, or sexual orientation, or because he or she
perceives that the other person has one or more of those
characteristics, *or because the other person associates
with or because he or she perceives that the other person
associates with someone who has one or more of those
characteristics.*

(b) No person, whether or not acting under color of
law, shall knowingly deface, damage, or destroy the real
or personal property of any other person for the purpose
of intimidating or interfering with the free exercise or
enjoyment of any right or privilege secured to the other
person by the Constitution or laws of this state or by the
Constitution or laws of the United States, because of the
other person's race, color, religion, ancestry, national
origin, disability, gender, or sexual orientation, or because
he or she perceives that the other person has one or more
of those characteristics, *or because the other person
associates with or because he or she perceives that the
other person associates with someone who has one or
more of those characteristics.*

1 (c) Any person convicted of violating subdivision (a)
 2 or (b) shall be punished by imprisonment in a county jail
 3 not to exceed one year, or by a fine not to exceed five
 4 thousand dollars (\$5,000), or by both that imprisonment
 5 and fine, and the court shall order the defendant to
 6 perform a minimum of community service, not to exceed
 7 400 hours, to be performed over a period not to exceed
 8 350 days, during a time other than his or her hours of
 9 employment or school attendance. However, no person
 10 shall be convicted of violating subdivision (a) based upon
 11 speech alone, except upon a showing that the speech itself
 12 threatened violence against a specific person or group of
 13 persons and that the defendant had the apparent ability
 14 to carry out the threat.

15 *SEC. 2. Section 422.7 of the Penal Code is amended to*
 16 *read:*

17 422.7. Except in the case of a person punished under
 18 Section 422.6, any crime which is not made punishable by
 19 imprisonment in the state prison shall be punishable by
 20 imprisonment in the state prison or in a county jail not to
 21 exceed one year, by a fine not to exceed ten thousand
 22 dollars (\$10,000), or by both that imprisonment and fine,
 23 if the crime is committed against the person or property
 24 of another for the purpose of intimidating or interfering
 25 with that other person's free exercise or enjoyment of any
 26 right secured to him or her by the Constitution or laws of
 27 this state or by the Constitution or laws of the United
 28 States and because of the other person's race, color,
 29 religion, ancestry, national origin, disability, gender, or
 30 sexual orientation, or because the defendant perceives
 31 that the other person has one or more of those
 32 characteristics, *or because the other person associates*
 33 *with or because he or she perceives that the other person*
 34 *associates with someone who has one or more of those*
 35 *characteristics* under any of the following circumstances,
 36 which shall be charged in the accusatory pleading:

37 (a) The crime against the person of another either
 38 includes the present ability to commit a violent injury or
 39 causes actual physical injury.

1 (b) The crime against property causes damage in
2 excess of five hundred dollars (\$500).

3 (c) The person charged with a crime under this
4 section has been convicted previously of a violation of
5 subdivision (a) or (b) of Section 422.6, or has been
6 convicted previously of a conspiracy to commit a crime
7 described in subdivision (a) or (b) of Section 422.6.

8 *SEC. 3. Section 422.75 of the Penal Code is amended*
9 *to read:*

10 422.75. (a) Except in the case of a person punished
11 under Section 422.7, a person who commits a felony or
12 attempts to commit a felony because of the victim's race,
13 color, religion, nationality, country of origin, ancestry,
14 disability, gender, or sexual orientation, or because he or
15 she perceives that the victim has one or more of those
16 characteristics, *or because the other person associates*
17 *with or because he or she perceives that the other person*
18 *associates with someone who has one or more of those*
19 *characteristics* shall receive an additional term of one,
20 two, or three years in the state prison, at the court's
21 discretion.

22 (b) Except in the case of a person punished under
23 Section 422.7 or subdivision (a) of this section, any person
24 who commits a felony or attempts to commit a felony
25 against the property of a public agency or private
26 institution, including a school, educational facility, library
27 or community center, meeting hall, place of worship, or
28 offices of an advocacy group, or the grounds adjacent to,
29 owned, or rented by the public agency or private
30 institution, because the property of the public agency or
31 private institution is identified or associated with a person
32 or group of an identifiable race, color, religion,
33 nationality, country of origin, ancestry, gender, disability,
34 or sexual orientation, shall receive an additional term of
35 one, two, or three years in the state prison, at the court's
36 discretion.

37 (c) Except in the case of a person punished under
38 Section 422.7 or subdivision (a) or (b) of this section, any
39 person who commits a felony, or attempts to commit a
40 felony, because of the victim's race, color, religion,

1 nationality, country of origin, ancestry, gender, disability,
2 or sexual orientation, or because he or she perceives that
3 the victim has one or more of those characteristics, *or*
4 *because the other person associates with or because he or*
5 *she perceives that the other person associates with*
6 *someone who has one or more of those characteristics* and
7 who voluntarily acted in concert with another person,
8 either personally or by aiding and abetting another
9 person, shall receive an additional two, three, or four
10 years in the state prison, at the court's discretion.

11 (d) For the purpose of imposing an additional term
12 under subdivision (a) or (c), it shall be a factor in
13 aggravation that the defendant personally used a firearm
14 in the commission of the offense. Nothing in this
15 subdivision shall preclude a court from also imposing a
16 sentence enhancement pursuant to Section 12022.5,
17 12022.53, or 12022.55, or any other law.

18 (e) A person who is punished pursuant to this section
19 also shall receive an additional term of one year in the
20 state prison for each prior felony conviction on charges
21 brought and tried separately in which it was found by the
22 trier of fact or admitted by the defendant that the crime
23 was committed because of the victim's race, color,
24 religion, nationality, country of origin, ancestry,
25 disability, gender, or sexual orientation, or that the crime
26 was committed because the defendant perceived that the
27 victim had one or more of those characteristics, *or*
28 *because the other person associates with or because he or*
29 *she perceives that the other person associates with*
30 *someone who has one or more of those characteristics.*
31 This additional term shall only apply where a sentence
32 enhancement is not imposed pursuant to Section 667 or
33 667.5.

34 (f) Any additional term authorized by this section shall
35 not be imposed unless the allegation is charged in the
36 accusatory pleading and admitted by the defendant or
37 found to be true by the trier of fact.

38 (g) Any additional term imposed pursuant to this
39 section shall be in addition to any other punishment
40 provided by law.

1 (h) Notwithstanding any other provision of law, the
2 court may strike any additional term imposed by this
3 section if the court determines that there are mitigating
4 circumstances and states on the record the reasons for
5 striking the additional punishment.

6 (i) (1) “Because of” means that the bias motivation
7 must be a cause in fact of the offense, whether or not other
8 causes also exist. When multiple concurrent motives exist,
9 the prohibited bias must be a substantial factor in
10 bringing about the particular result.

11 (2) This subdivision does not constitute a change in,
12 but is declaratory of, existing law under *In Re M.S.* (1995)
13 10 Cal. 4th 698 and *People v. Superior Court*
14 (*Aishman*)(1995) 10 Cal. 4th 735.

15 *SEC. 4. No reimbursement is required by this act*
16 *pursuant to Section 6 of Article XIII B of the California*
17 *Constitution because the only costs that may be incurred*
18 *by a local agency or school district will be incurred*
19 *because this act creates a new crime or infraction,*
20 *eliminates a crime or infraction, or changes the penalty*
21 *for a crime or infraction, within the meaning of Section*
22 *17556 of the Government Code, or changes the definition*
23 *of a crime within the meaning of Section 6 of Article*
24 *XIII B of the California Constitution.*

